

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

YETI Coolers, LLC,

Plaintiff,

v.

**Voyager Industries, Inc. d/b/a Yeti
Outdoors,**

Defendant.

Case No. 1:19-CV-00692

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

- (1) TRADEMARK INFRINGEMENT IN
VIOLATION OF 15 U.S.C. § 1114(1);**
- (2) TRADEMARK INFRINGEMENT IN
VIOLATION OF 15 U.S.C. § 1125(a);**
- (3) TRADEMARK DILUTION IN
VIOLATION OF 15 U.S.C. § 1125(c);**
- (4) TRADEMARK DILUTION IN
VIOLATION OF TEX. BUS. & COM.
CODE § 16.103;**
- (5) UNFAIR COMPETITION AND FALSE
DESIGNATION OF ORIGIN IN
VIOLATION OF 15 U.S.C. § 1125(a);**
- (6) CYBERPIRACY IN VIOLATION OF 15
U.S.C. § 1125(d);**
- (7) COMMON LAW TRADEMARK
INFRINGEMENT;**
- (8) COMMON LAW UNFAIR
COMPETITION;**
- (9) COMMON LAW
MISAPPROPRIATION; AND**
- (10) UNJUST ENRICHMENT**

Jury Trial Demanded

COMPLAINT

Plaintiff, YETI Coolers, LLC (“YETI”), for its complaint against Voyager Industries, Inc. d/b/a Yetti Outdoors (“Yetti”), alleges as follows:

The Parties

1. YETI is a company organized and existing under the laws of the State of Delaware with a principal place of business at 7601 Southwest Parkway, Austin, TX 78735.

2. On information and belief, Yetti is a company organized and existing under the laws of the State of Minnesota with a principal place of business at 803 Central Avenue North, Brandon, MN 56315.

Jurisdiction and Venue

3. This is an action for trademark infringement, trademark dilution, unfair competition and false designation of origin, cyberpiracy, misappropriation, and unjust enrichment. This complaint arises under the Texas Business & Commerce Code, the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.* (“the Lanham Act”), federal common law, and state common law, including the law of Texas.

4. This Court has subject matter jurisdiction over this action pursuant to at least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a).

5. This Court has personal jurisdiction over Yetti because, *inter alia*, Yetti is purposefully and intentionally availing itself of the privileges of doing business in the State of Texas, including in this District. Among other things, (i) Yetti has advertised, marketed, promoted, offered for sale, sold, and/or distributed, and, on information and belief, continues to advertise, market, promote, offer for sale, sell, distribute, manufacture, and/or import, infringing products to customers and/or potential customers, including in this District, at least through

Yetti's websites, including, for example, e.g., <https://yetioutdoors.com/>; <https://www.facebook.com/yettifishhouse/>; and <https://twitter.com/yettithoughts> (ii) Yetti's tortious acts giving rise to this lawsuit and harm to YETI have occurred and are occurring in the State of Texas, including in this District, (iii) on information and belief, Yetti acted with knowledge that its unauthorized use of YETI's rights would cause harm to YETI in the State of Texas and in this District, and (iv) Yetti's customers and/or potential customers reside in the State of Texas, including in this District.

6. Venue is proper in this District pursuant to at least 28 U.S.C. §§ 1391(a)-(d).

General Allegations – YETI's Intellectual Property

7. For years, YETI has continuously engaged in the design, development, manufacture, sale, promotion, marketing, advertising, and distribution of, among other things, insulated coolers, drinkware, clothing, bags, and fishing gear. YETI has used the trademark "YETI" throughout the United States and the State of Texas in connection with its goods and services, including at least its insulated coolers, drinkware, clothing, bags, and fishing gear.


8. In view of YETI's extensive and continuous use of "YETI," consumers have come to associate "YETI" as a source identifier of YETI, and YETI owns trademark rights in "YETI." Further, YETI owns several trademark registrations, including:

i. Trademark Registration No. 3,203,869 ("the '869 Registration") for "YETI" for "portable coolers";

ii. Trademark Registration No. 4,948,370 ("the '370 Registration") for



for "clothing, namely, shirts, jerseys, shorts, pants, hats, caps, sweatshirts, socks, jackets";

- iii. Trademark Registration No. 4,948,371 (“the ‘371 Registration”) for “YETI” for “clothing, namely, t-shirts, jerseys, shorts, hats, caps, sweatshirts, socks, jackets”;
- iv. Trademark Registration No. 5,330,469 (“the ‘469 Registration”) for  for “custom imprinting of tumblers, jugs and mugs; custom imprinting of beverageware; custom imprinting of drink holders; custom imprinting of insulated food and drink containers; custom imprinting of portable coolers”;
- v. Trademark Registration No. 5,341,587 (“the ‘587 Registration”) for “YETI” for “metal strapping or tie downs; metal locks for coolers; metal latches; parts for portable coolers, namely, corner chocks primarily made of metal”;
- vi. Trademark Registration No. 5,370,283 (“the ‘283 Registration”) for “YETI” for “backpacks; hunting bags; kill bags, namely, hunter’s game bags; catch bags, namely, angler’s game bags; wallets”;
- vii. Trademark Registration No. 5,392,333 (“the ‘333 Registration”) for “YETI” for “custom imprinting of tumblers, jugs and mugs; custom imprinting of beverageware; custom imprinting of drink holders; custom imprinting of insulated food and drink containers; custom imprinting of portable coolers”;
- viii. Trademark Registration No. 5,438,798 (“the ‘798 Registration”) for “YETI” for “seat cushions; non-metal locks for coolers; non-metal latches; parts for portable coolers, namely, plastic corner chocks”;
- ix. Trademark Registration No. 5,521,939 (“the ‘939 Registration”) for “YETI” for “providing a website featuring non-downloadable videos in the fields of

hunting, adventure, nature, outdoors, sports, camping, hiking, and fishing; providing on-line videos featuring hunting, adventure, nature, outdoors, sports, camping, hiking, and fishing, not downloadable; entertainment services, namely, providing a web site featuring non-downloadable hunting, adventure, nature, outdoors, sports, camping, hiking, and fishing themed photographs and videos; education services, namely, providing on-line non-downloadable videos in the field of hunting, adventure travel, nature travel, outdoors recreational activities, sports, camping, hiking, and fishing; educational services, namely, providing information in the fields of hunting, outdoors recreational activities, sports, camping, hiking, and fishing”; and

- x. Trademark Registration No. 5,601,737 (“the ‘737 Registration”) for

YETI

for “shirts; t-shirts; hats; sun shirts; caps; sweatshirts; hooded sweatshirts; shorts; vests.”

Copies of these trademark registrations attached as Exhibits 1-10. Additionally, the ‘869, ‘370, and ‘371 Registrations are incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and thus serve as conclusive evidence of their validity and of YETI’s exclusive rights to use these marks in commerce pursuant to 15 U.S.C. § 1115(b). YETI also has common law rights in the “YETI” trademark based on YETI’s use of “YETI” in commerce in connection with YETI’s goods and services, including, *inter alia*, insulated coolers, drinkware, clothing, bags, and fishing gear. YETI’s rights in the “YETI” trademarks, including the ‘869, ‘370, ‘371, ‘469, ‘587, ‘283, ‘333, ‘798, ‘939, and ‘737 Registrations, and its common law rights, are collectively referred to as “YETI’s Trademarks.”

9. Exemplary images of YETI products bearing YETI's Trademarks are shown below in Illustration 1.

Illustration 1: Exemplary Images of YETI® Products Bearing YETI Trademarks



Illustration 1: Exemplary Images of YETI® Products Bearing YETI Trademarks



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10. As a result of, *inter alia*, YETI's exclusive, continuous and substantial use of YETI's Trademarks, YETI's exclusive, continuous, and substantial advertising and promoting of products bearing YETI's Trademarks, and the publicity and attention that has been paid to

YETI's Trademarks, these trademarks have become famous in the United States and have acquired valuable goodwill and substantial secondary meaning in the marketplace, as consumers have come to uniquely associate YETI's Trademarks as source identifiers of YETI.

General Allegations – Yeti's Unlawful Activities

11. Yeti has purposefully and unlawfully used and continues to purposefully and unlawfully use YETI's Trademarks and/or colorable imitations thereof in connection with *inter alia*, advertising, promoting, offering to sell, selling, and/or distributing Yeti's products, and is thereby infringing and diluting YETI's Trademarks and intentionally trading on YETI's goodwill. Yeti's actions have all been without the authorization of YETI, and in violation of YETI's rights, including the rights protected by YETI's intellectual property, including YETI's Trademarks.

12. Yeti is violating YETI's rights by using at least "YETTI," "<https://yetioutdoors.com/>," "<https://www.facebook.com/yettifishhouse/>," and "<https://twitter.com/yettithoughts>," in commerce to *inter alia*, advertise, promote, offer to sell, sell, and/or distribute Yeti's products, including at least clothing, bags, drinkware, and ice fishing, hunting, and camping trailers, that are substantially similar to YETI's goods. Examples of Yeti's infringing uses of YETI's Trademarks and/or colorable imitations thereof are shown below in Illustration 2.

Illustration 2: Examples of Yeti's Violations of YETI's Rights



13. As a result of Yetti's activities related to use of YETI's Trademarks and/or colorable imitations thereof, there is a likelihood of confusion between Yetti and its products on the one hand, and YETI and its products on the other hand.

14. YETI used YETI's Trademarks extensively and continuously before Yetti began advertising, promoting, offering to sell, selling, distributing, manufacturing, and/or importing its products using YETI's Trademarks and/or colorable imitations thereof. Moreover, YETI's

Trademarks became famous and acquired secondary meaning in the United States and in the State of Texas generally and in geographic areas in Texas before Yeti commenced its unlawful use of YETI's Trademarks.

15. Yeti's use of YETI's Trademarks and/or colorable imitations thereof has been intentional, willful, and malicious. Yeti's bad faith is evidenced at least by Yeti's direct copying and unlawful use of YETI's Trademarks and/or colorable imitations thereof with knowledge of YETI's Trademarks and with the intent of benefiting from YETI's goodwill in YETI's Trademarks.

16. As discussed above and as set forth in the counts below, Yeti's actions are unfair and unlawful.

Count I:
Trademark Infringement under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

17. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 16 as though fully set forth herein.

18. Based on the activities described above, including, for example, Yeti using YETI's federally registered trademarks, including at least the trademarks protected by the '869 Registration, the '370 Registration, the '371 Registration, the '469 Registration; the '587 Registration, the '283 Registration, the '333 Registration, the '798 Registration, the '939 Registration, the '737 Registration, and/or colorable imitations thereof, in connection with advertising, promoting, offering for sale, selling, distributing, manufacturing, and/or importing the infringing products, Yeti has infringed YETI's federally registered trademarks under § 32(1) of the Lanham Act, 15 U.S.C. § 1114(1). Yeti's use of YETI's federally registered trademarks, including through counterfeits, reproductions, copies, and/or colorable imitations thereof is likely to cause confusion, or to cause mistake, or to deceive. Moreover, the 869, '370, '371, '469,

‘587, ‘283, ‘333, ‘798, ‘939, and ‘737 Registrations predate Yetti’s unlawful use of YETI’s Trademarks and/or colorable imitations thereof in connection with the infringing products.

19. Yetti’s use of YETI’s Trademarks and/or colorable imitations thereof in connection with the infringing products has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI’s Trademarks, YETI’s products, and YETI.

20. On information and belief, Yetti’s use of YETI’s Trademarks and/or colorable imitations thereof has been intentional, willful, and malicious. Yetti’s bad faith is evidenced at least by Yetti’s unlawful use of YETI’s Trademarks in an effort to sell the infringing products, Yetti’s knowledge of YETI’s rights, and Yetti’s continuing disregard for YETI’s rights.

21. YETI is entitled to injunctive relief, and YETI is entitled to recover at least Yetti’s profits, YETI’s actual damages, enhanced damages, costs, and reasonable attorney fees under at least 15 U.S.C. §§ 1114(1), 1116, and 1117.

Count II:
Trademark Infringement under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)

22. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 21 as though fully set forth herein.

23. Based on the activities described above, including, for example, Yetti’s use of YETI’s Trademarks and/or colorable imitations thereof, Yetti violates § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Yetti’s use of YETI’s Trademarks and/or colorable imitations thereof is likely to cause confusion, mistake, or deception as to the affiliation, connection, and/or association of Yetti with YETI and as to the origin, sponsorship, and/or approval of the

infringing products, at least by creating the false and misleading impression that the infringing products are manufactured by, authorized by, or otherwise associated with YETI.

24. YETI's Trademarks are entitled to protection under the Lanham Act. YETI's Trademarks are inherently distinctive. YETI has extensively and continuously promoted and used its Trademarks in the United States. Through that extensive and continuous use, YETI's Trademarks have become well-known indicators of the origin and quality of YETI's products. YETI's Trademarks have also acquired substantial secondary meaning in the marketplace. Moreover, YETI's Trademarks acquired this secondary meaning before Yetti commenced its unlawful use of YETI's Trademarks in connection with the infringing products.

25. Yetti's use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, YETI's products, and YETI.

26. On information and belief, Yetti's use of YETI's Trademarks and/or colorable imitations thereof has been intentional, willful, and malicious. Yetti's bad faith is evidenced at least by Yetti's unlawful use of YETI's Trademarks in an effort to sell the infringing products, Yetti's knowledge of YETI's rights, and Yetti's continuing disregard for YETI's rights.

27. YETI is entitled to injunctive relief, and YETI is entitled to recover at least Yetti's profits, YETI's actual damages, enhanced damages, costs, and reasonable attorney fees under at least 15 U.S.C. §§ 1125(a), 1116, and 1117.

Count III:
Trademark Dilution under § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)

28. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 27 as though fully set forth herein.

29. Based on the activities described above, including, for example, Yetti's use of YETI's Trademarks and/or colorable imitations thereof, Yetti is likely to dilute, has diluted, and continues to dilute YETI's famous Trademarks in violation of § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). Yetti's use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products is likely to cause, and has caused, dilution of YETI's famous trademarks at least by eroding the public's exclusive identification of YETI's famous trademarks with YETI, by lessening the capacity of YETI's famous trademarks to identify and distinguish YETI's products, and by impairing the distinctiveness of YETI's famous trademarks.

30. YETI's Trademarks are famous and are entitled to protection under the Lanham Act. YETI's Trademarks are inherently distinctive. YETI's Trademarks also have acquired distinctiveness through YETI's extensive and continuous promotion and use of YETI's Trademarks in the United States. Through that extensive and continuous use, YETI's Trademarks have become famous, well-known indicators of the origin and quality of YETI's products throughout the United States, and are widely recognized by the general consuming public as a designation of the source of YETI and YETI's products. YETI's Trademarks have also acquired substantial secondary meaning in the marketplace. Moreover, YETI's Trademarks became famous and acquired this secondary meaning before Yetti commenced its unlawful use of YETI's Trademarks in connection with the infringing products.

31. Yetti's use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products has caused, and, unless enjoined, will continue to cause,

substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, YETI's products, and YETI.

32. On information and belief, Yetti's use of YETI's Trademarks and/or colorable imitations thereof has been intentional, willful, and malicious. Yetti's bad faith is evidenced at least by Yetti's unlawful use of YETI's Trademarks in an effort to sell the infringing products, Yetti's knowledge of YETI's rights, and Yetti's continuing disregard for YETI's rights.

33. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Yetti's profits, YETI's actual damages, enhanced profits and damages, costs, and reasonable attorney fees under at least 15 U.S.C. §§ 1125(c), 1116, and 1117.

Count IV:
Trademark Dilution Under Tex. Bus. & Com. Code § 16.103

34. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 33 as though fully set forth herein.

35. Based on the activities described above, including, for example, Yetti's use of YETI's Trademarks and/or colorable imitations thereof, Yetti is likely to dilute, has diluted, and continues to dilute YETI's Trademarks in violation § 16.103 of the Texas Business & Commerce Code. Yetti's use of YETI's Trademarks and/or colorable imitations thereof is likely to cause, and has caused, dilution of YETI's famous Trademarks at least by eroding the public's exclusive identification of YETI's Trademarks with YETI, by lessening the capacity of YETI's famous Trademarks to identify and distinguish YETI's products, and by impairing the distinctness of YETI's famous Trademarks.

36. YETI's Trademarks are famous and are entitled to protection under Texas law. YETI has extensively and continuously promoted and used its Trademarks in the United States

and in the State of Texas. Through that extensive and continuous use, YETI's Trademarks have become famous and well-known indicators of the origin and quality of YETI's products in the United States and in the State of Texas generally and in geographic areas in Texas, and YETI's Trademarks are widely recognized by the public throughout Texas and in geographic areas in Texas as a designation of the source of YETI and YETI's products. YETI's Trademarks have also acquired substantial secondary meaning in the marketplace, including in the State of Texas and in geographic areas in Texas. Moreover, YETI's Trademarks became famous and acquired this secondary meaning before Yetti commenced its unlawful use of YETI's Trademarks in connection with the infringing products.

37. Yetti's use of YETI's Trademarks and/or colorable imitations thereof has caused, and, unless enjoined, will continue to cause, substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, YETI's products, and YETI.

38. On information and belief, Yetti's use of YETI's Trademarks and/or colorable imitations thereof has been intentional, willful, and malicious. Yetti's bad faith is evidenced at least by Yetti's unlawful use of YETI's Trademarks to sell the infringing products, and by Yetti's continuing disregard for YETI's rights.

39. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Yetti's profits, YETI's actual damages, enhanced profits and damages, and reasonable attorney fees under at least Tex. Bus. & Com. Code § 16.104.

Count V:
Unfair Competition and False Designation of Origin under § 43(a)
of the Lanham Act, 15 U.S.C. § 1125(a)

40. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 39 as though fully set forth herein.

41. Yetti's advertisements, marketing, promotions, offers to sell, sales, distribution, manufacture, and/or importing of the infringing products, in direct competition with YETI, violate § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and constitute unfair competition and false designation of origin, at least because Yetti has obtained an unfair advantage as compared to YETI through Yetti's use of YETI's Trademarks and because such uses are likely to cause consumer confusion as to the origin and/or sponsorship/affiliation of Yetti's infringing products, at least by creating the false and misleading impression that its infringing products are manufactured by, authorized by, or otherwise associated with YETI.

42. YETI's Trademarks are entitled to protection under the Lanham Act. YETI has extensively and continuously promoted and used its Trademarks in the United States. Through that extensive and continuous use, YETI's Trademarks have become well-known indicators of the origin and quality of YETI's products. YETI's Trademarks are also inherently distinctive. Moreover, YETI's rights in YETI's Trademarks predate Yetti's unlawful use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products.

43. Yetti's use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, YETI's products, and YETI.

44. On information and belief, Yetti's use of YETI's Trademarks and/or colorable imitations thereof has been intentional, willful, and malicious. Yetti's bad faith is evidenced at least by Yetti's unlawful use of YETI's Trademarks in an effort to sell the infringing products, Yetti's knowledge of YETI's rights, and Yetti's continuing disregard for YETI's rights.

45. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Yetti's profits, YETI's actual damages, enhanced damages, costs, and reasonable attorney fees under at least 15 U.S.C. §§ 1125(a), 1116, and 1117.

Count VI:
Cyberpiracy in Violation of 15. U.S.C. § 1125(d)

46. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 45 as though fully set forth herein.

47. Yetti registered, trafficked in, used, and continues to use domain names—including at least <https://yettioutdoors.com>—that include YETI's Trademarks, that are confusingly similar to YETI's Trademarks, and that are dilutive of YETI's Trademarks. Yetti's acquisition of, and subsequent use of, at least <https://yettioutdoors.com> violates § 43(d) of the Lanham Act, 15 U.S.C. § 1125(d), and constitutes Cyberpiracy.

48. YETI's Trademarks are entitled to protection under the Lanham Act. YETI has extensively and continuously promoted and used its "YETI" Trademarks in the United States. Through that extensive and continuous use, YETI's Trademarks have become a well-known indicator of the origin and quality of YETI's products. YETI's Trademarks have also acquired substantial secondary meaning in the marketplace. Moreover, YETI's Trademarks acquired this secondary meaning before Yetti commenced its unlawful use of YETI's Trademarks in connection with the <https://yettioutdoors.com> domain and the infringing products.

49. On information and belief, Yeti had and continues to have a bad faith intent to profit from YETI's Trademarks. Yeti's bad faith is evidenced at least by Yeti's unlawful use of YETI's Trademarks in an effort to sell the infringing products, Yeti's knowledge of YETI's rights, and Yeti's continuing disregard for YETI's rights.

50. Yeti's use of at least <https://yetioutdoors.com> has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, YETI's products, and YETI.

51. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Yeti's profits, YETI's actual damages, enhanced damages, costs, and reasonable attorney fees under at least 15 U.S.C. §§ 1125(a), 1125(d), 1116, and 1117. YETI is further entitled to have at least <https://yetioutdoors.com> cancelled and/or transferred to YETI.

Count VII:
Common Law Trademark Infringement

52. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 51 as though fully set forth herein.

53. Yeti's activities described above, including, for example, Yeti's use of YETI's Trademarks and/or colorable imitations thereof, in direct competition with YETI, constitute common law trademark infringement, at least because Yeti's use of YETI's Trademarks and/or colorable imitations thereof, is likely to cause consumer confusion as to the origin and/or sponsorship/affiliation of the infringing products, at least by creating the false and misleading impression that the infringing products are manufactured by, authorized by, or otherwise associated with YETI.

54. YETI's Trademarks are entitled to protection under the common law. YETI has extensively and continuously promoted and used YETI's Trademarks in the United States and the State of Texas. Through that extensive and continuous use, YETI's Trademarks have become well-known indicators of the origin and quality of YETI's products. YETI's Trademarks have also acquired substantial secondary meaning in the marketplace. Moreover, YETI's Trademarks acquired this secondary meaning before Yeti commenced its unlawful use of YETI's Trademarks in connection with the infringing products.

55. Yeti's use of YETI's Trademarks and/or colorable imitations thereof, has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, YETI's products, and YETI.

56. On information and belief, Yeti's use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products has been intentional, willful, and malicious. Yeti's bad faith is evidenced at least by Yeti's unlawful use of YETI's Trademarks to sell the infringing products, Yeti's infringement of YETI's other rights, and Yeti's continuing disregard for YETI's rights.

57. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least YETI's damages, Yeti's profits, punitive damages, costs, and reasonable attorney fees.

Count VIII:
Common Law Unfair Competition

58. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 57 as though fully set forth herein.

59. Yeti's advertisements, marketing, promotions, offers to sell, sales, distribution, manufacture, and/or importing of the infringing products, in direct competition with YETI, constitute common law unfair competition, at least by palming off/passing off of Yeti's goods, by simulating YETI's Trademarks in an intentional and calculated manner that is likely to cause consumer confusion as to origin and/or sponsorship/affiliation of Yeti's infringing products, at least by creating the false and misleading impression that its infringing products are manufactured by, authorized by, or otherwise associated with YETI. Yeti has also interfered with YETI's business.

60. YETI's Trademarks are entitled to protection under the common law. YETI has extensively and continuously promoted and used its Trademarks in the United States and the State of Texas. Through that extensive and continuous use, YETI's Trademarks have become well-known indicators of the origin and quality of YETI's products. YETI's Trademarks are also inherently distinctive. Moreover, YETI's rights in YETI's Trademarks predate Yeti's unlawful use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products.

61. Yeti's use of YETI's Trademarks and/or colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, YETI's products, and YETI.

62. On information and belief, Yeti's use of YETI's Trademarks and/or colorable imitations thereof has been intentional, willful, and malicious. Yeti's bad faith is evidenced at

least by Yeti's unlawful use of YETI's Trademarks in an effort to sell the infringing products, Yeti's knowledge of YETI's rights, and Yeti's continuing disregard for YETI's rights.

63. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least YETI's damages, Yeti's profits, punitive damages, costs, and reasonable attorney fees.

Count IX:
Common Law Misappropriation

64. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 63 as though fully set forth herein.

65. Yeti's advertisements, promotions, offers to sell, sales, distribution, manufacture, and/or importing of the infringing products, in direct competition with YETI, constitute common law misappropriation.

66. YETI has developed YETI's Trademarks and the goods and services sold in connection with YETI's Trademarks through extensive time, labor, effort, skill, and money. Yeti has wrongfully used YETI's Trademarks and/or colorable imitations thereof in competition with YETI and gained a special advantage because Yeti was not burdened with the expenses incurred by YETI. Yeti has commercially damaged YETI, at least by causing consumer confusion as to origin and/or sponsorship/affiliation of Yeti's infringing products, by creating the false and misleading impression that its infringing products are manufactured by, sold by, authorized by, or otherwise associated with YETI, and by taking away sales that YETI would have made.

67. YETI's Trademarks are entitled to protection under the common law. YETI has extensively and continuously promoted and used its Trademarks in the United States and the State of Texas. Through that extensive and continuous use, YETI's Trademarks have become well-known indicators of the origin and quality of YETI's products. YETI's Trademarks are

also inherently distinctive. Moreover, YETI's rights in YETI's Trademarks predate Yeti's unlawful use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products.

68. Yeti's use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, YETI's products, and YETI. Moreover, as a result of its misappropriation, Yeti has profited and continue to profit by misappropriating the time, effort, and money that YETI invested in establishing the reputation and goodwill associated with YETI's Trademarks and the goods and services sold in connection with YETI's Trademarks.

69. On information and belief, Yeti's misappropriation of YETI's Trademarks and/or colorable imitations thereof has been intentional, willful, and malicious. Yeti's bad faith is evidenced at least by Yeti's unlawful use of YETI's Trademarks in an effort to sell the infringing products, Yeti's knowledge of YETI's rights, and Yeti's continuing disregard for YETI's rights.

70. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least YETI's damages, Yeti's profits, punitive damages, costs, and reasonable attorney fees.

Count X:
Unjust Enrichment

71. YETI realleges and incorporates the allegations set forth in paragraphs 1 through 70 as though fully set forth herein.

72. Yeti's activities described above, including, for example, its advertisements, marketing, promotions, offers to sell, sales, distribution, manufacturing, and/or importing of the

infringing products in connection with YETI's Trademarks and/or colorable imitations thereof, in direct competition with YETI, constitute unjust enrichment, at least because Yetti has wrongfully obtained benefits at YETI's expense. Yetti has also, *inter alia*, operated with an undue advantage.

73. YETI developed YETI's Trademarks and the goods and services sold in connection with YETI's Trademarks through extensive time, labor, effort, skill, and money. Yetti has wrongfully used and is wrongfully using YETI's Trademarks and/or colorable imitations thereof, in competition with YETI, and have gained and are gaining a wrongful benefit by undue advantage through such use. Yetti has not been burdened with the expenses incurred by YETI, yet Yetti is obtaining the resulting benefits for its own business and products.

74. YETI's Trademarks are entitled to protection under the common law. YETI has extensively and continuously promoted and used its Trademarks in the United States and the State of Texas. Through that extensive and continuous use, YETI's Trademarks have become well-known indicators of the origin and quality of YETI's products. YETI's Trademarks are also inherently distinctive. Moreover, YETI's rights in YETI's Trademarks predate Yetti's unlawful use of YETI's Trademarks and/or colorable imitations thereof in connection with the infringing products.

75. Yetti's use of YETI's Trademarks and/or colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable commercial injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with YETI's Trademarks, with YETI's products, and with YETI. YETI accumulated this goodwill and reputation through extensive time, labor, effort, skill, and investment. Yetti has wrongfully obtained and is

wrongfully obtaining a benefit at YETI's expense by taking undue advantage and free-riding on YETI's efforts and investments, and enjoying the benefits of YETI's hard-earned goodwill and reputation.

76. On information and belief, Yetti's unjust enrichment at YETI's expense has been intentional, willful, and malicious. Yetti's bad faith is evidenced at least by Yetti's unlawful use of YETI's Trademarks in an effort to sell the infringing products, Yetti's knowledge of YETI's rights, and Yetti's continuing disregard for YETI's rights.

77. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Yetti's profits.

Demand for Jury Trial

YETI hereby demands a jury trial on all issues so triable.

Relief Sought

WHEREFORE, YETI respectfully prays for:

1. Judgment that Yetti has (i) infringed YETI's registered trademarks in violation of § 1114(1) of Title 15 in the United States Code; (ii) infringed YETI's trademarks in violation of § 1125(a) of Title 15 in the United States Code; (iii) diluted YETI's trademarks in violation of § 1125(c) of Title 15 in the United States Code; (iv) diluted YETI's trademarks in violation of Tex. Bus. & Com. Code § 16.103; (v) engaged in unfair competition and false designation of origin in violation of § 1125(a) of Title 15 in the United States Code; (vi) engaged in Cyberpiracy in violation of 15 U.C.S. § 1125(d) of Title 15 in the United States Code; (vii) violated YETI's common law rights in YETI's trademarks; (viii) engaged in common law unfair competition; (ix) engaged in common law misappropriation; (x) been unjustly enriched at YETI's expense; and that all of these wrongful activities by Yetti were willful;

2. An injunction against further infringement and dilution of YETI's trademarks, and further acts of unfair competition, misappropriation, and unjust enrichment by Yetti, and each of its agents, employees, servants, attorneys, successors and assigns, licensees, and all others in privity or acting in concert with any of them, including at least from selling, offering to sell, distributing, importing, or advertising the infringing products, or any other products that use a copy, reproduction, or colorable imitation of YETI's trademarks, pursuant to at least 15 U.S.C. § 1116 and Tex. Bus. & Com. Code § 16.104;

3. An Order directing the destruction of all infringing products, labels, signs, prints, packages, wrappers, receptacles, and advertisements, including on the Internet, in the possession, custody, or control, of Yetti, bearing YETI's trademarks and/or colorable imitations thereof, pursuant to at least 15 U.S.C. § 1118;

4. An Order directing Yetti to recall all infringing products sold and/or distributed and provide a full refund for all recalled infringing products;

5. An Order directing Yetti to publish a public notice providing proper attribution of YETI's trademarks to YETI, and to provide a copy of this notice to all customers, distributors, and/or others from whom the infringing products are recalled;

6. An Order barring importation of the infringing products and/or colorable imitations thereof into the United States, and barring entry of the infringing products and/or colorable imitations thereof into any customhouse of the United States, pursuant to at least 15 U.S.C. § 1125(b);

7. An Order to cancel and/or transfer at least the <https://yettioutdoors.com/> domain name to YETI;

8. An Order that Yetti pay YETI for all profits and damages resulting from Yetti's cyberpiracy activities and that the award to YETI be trebled, as provided for under 15 U.S.C. § 1117, or, at YETI's election, that YETI be awarded statutory damages from Yetti in the amount of \$100,000.00 per cyberpirated domain name used, as provided by at least 15 U.S.C. § 1117(d);

9. An award of Yetti's profits, YETI's actual damages, enhanced damages, exemplary damages, costs, prejudgment and post judgment interest, and reasonable attorney fees pursuant to at least 15 U.S.C. §§ 1114(1), 1125(a), 1125(c), 1116, and 1117 and Tex. Bus. & Com. Code § 16.104; and

10. Such other and further relief as this Court deems just and proper.

Dated: July 8, 2019

Respectfully Submitted,

By: /s/ Joseph J. Berghammer

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